

**INTANGIBLE INCOME AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to payment of income tax on global intangible low-taxed income.

**Highlighted Provisions:**

This bill:

- ▶ adds global intangible low-taxed income to the definition of unadjusted income in the Corporate Franchise and Income Taxes code;
- ▶ creates a subtraction from unadjusted income of corporate taxpayers for global intangible low-taxed income;
- ▶ creates a subtraction from adjusted gross income of individual taxpayers for global intangible low-taxed income;
- ▶ creates a subtraction from unadjusted income of estate and trust taxpayers for global intangible low-taxed income; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-7-101**, as last amended by Laws of Utah 2011, Chapter 69

**59-7-106**, as last amended by Laws of Utah 2017, Chapter 389

**59-10-114**, as last amended by Laws of Utah 2018, Chapters 190 and 370

**59-10-202**, as last amended by Laws of Utah 2018, Chapter 190

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*Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **59-7-101** is amended to read:

34 **59-7-101. Definitions.**

35 As used in this chapter:

36 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105  
37 and 59-7-106.

38 (2) (a) "Affiliated group" means one or more chains of corporations that are connected  
39 through stock ownership with a common parent corporation that meet the following  
40 requirements:

41 (i) at least 80% of the stock of each of the corporations in the group, excluding the  
42 common parent corporation, is owned by one or more of the other corporations in the group;  
43 and

44 (ii) the common parent directly owns at least 80% of the stock of at least one of the  
45 corporations in the group.

46 (b) "Affiliated group" does not include corporations that are qualified to do business  
47 but are not otherwise doing business in this state.

48 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which  
49 is limited and preferred as to dividends.

50 (3) "Apportionable income" means adjusted income less nonbusiness income net of  
51 related expenses, to the extent included in adjusted income.

52 (4) "Apportioned income" means apportionable income multiplied by the  
53 apportionment fraction as determined in Section 59-7-311.

54 (5) "Business income" [~~is as~~] means the same as that term is defined in Section  
55 59-7-302.

56 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:

57 (i) the shares or beneficial interests of the real estate investment trust are not regularly  
58 traded on an established securities market; and

59 (ii) more than 50% of the voting power or value of the shares or beneficial interests of  
60 the real estate investment trust are directly, indirectly, or constructively:

61 (A) owned by a controlling entity of the real estate investment trust; or

62 (B) controlled by a controlling entity of the real estate investment trust.

63 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

64 commission may make rules defining "established securities market."

65 (7) (a) "Common ownership" means the direct or indirect control or ownership of more  
66 than 50% of the outstanding voting stock of:

67 (i) a parent-subsiary controlled group as defined in Section 1563, Internal Revenue  
68 Code, except that 50% shall be substituted for 80%;

69 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue  
70 Code; or

71 (iii) three or more corporations each of which is a member of a group of corporations  
72 described in Subsection (2)(a)(i) or (ii), and one of which is:

73 (A) a common parent corporation included in a group of corporations described in  
74 Subsection (2)(a)(i); and

75 (B) included in a group of corporations described in Subsection (2)(a)(ii).

76 (b) Ownership of outstanding voting stock shall be determined by Section 1563,  
77 Internal Revenue Code.

78 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity  
79 that:

80 (i) is treated as an association taxable as a corporation under the Internal Revenue  
81 Code;

82 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue  
83 Code; and

84 (iii) directly, indirectly, or constructively holds more than 50% of:

85 (A) the voting power of a captive real estate investment trust; or

86 (B) the value of the shares or beneficial interests of a captive real estate investment  
87 trust.

88 (b) "Controlling entity of a captive real estate investment trust" does not include:

89 (i) a real estate investment trust, except for a captive real estate investment trust;

90 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal  
91 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real  
92 estate investment trust; or

93 (iii) a foreign real estate investment trust.

94 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

95 commission may make rules defining "established securities market."

96 (9) "Corporate return" or "return" includes a combined report.

97 (10) "Corporation" includes:

98 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue  
99 Code; and

100 (b) other organizations that are taxed as corporations for federal income tax purposes  
101 under the Internal Revenue Code.

102 (11) "Dividend" means any distribution, including money or other type of property,  
103 made by a corporation to its shareholders out of its earnings or profits accumulated after  
104 December 31, 1930.

105 (12) (a) "Doing business" includes any transaction in the course of its business by a  
106 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in  
107 this state.

108 (b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

109 (i) the right to do business through incorporation or qualification;

110 (ii) the owning, renting, or leasing of real or personal property within this state; and

111 (iii) the participation in joint ventures, working and operating agreements, the  
112 performance of which takes place in this state.

113 (13) "Domestic corporation" means a corporation that is incorporated or organized  
114 under the laws of this state.

115 (14) (a) "Farmers' cooperative" means an association, corporation, or other  
116 organization that is:

117 (i) (A) an association, corporation, or other organization of[:(~~†~~)] farmers[:;] or [(~~†~~)] fruit  
118 growers; or

119 (B) an association, corporation, or other organization that is similar to an association,  
120 corporation, or organization described in Subsection (14)(a)(i)(A); and

121 (ii) organized and operated on a cooperative basis to:

122 (A) (I) market the products of members of the cooperative or the products of other  
123 producers; and

124 (II) return to the members of the cooperative or other producers the proceeds of sales  
125 less necessary marketing expenses on the basis of the quantity of the products of a member or

126 producer or the value of the products of a member or producer; or

127 (B) (I) purchase supplies and equipment for the use of members of the cooperative or  
128 other persons; and

129 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at  
130 actual costs plus necessary expenses to the members of the cooperative or other persons.

131 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the  
132 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
133 Rulemaking Act, shall define:

134 (A) the terms~~[(H)]~~ "member"~~;~~ and ~~[(H)]~~ "producer"; and

135 (B) what constitutes an association, corporation, or other organization that is similar to  
136 an association, corporation, or organization described in Subsection (14)(a)(i)(A).

137 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing  
138 requirements under federal law for a farmers' cooperative.

139 (15) "Foreign corporation" means a corporation that is not incorporated or organized  
140 under the laws of this state.

141 (16) (a) "Foreign operating company" means a corporation ~~[(H)]~~ that:

142 (i) ~~[the corporation]~~ is incorporated in the United States;

143 (ii) conducts at least 80% of the corporation's business activity, as determined under  
144 Section 59-7-401, ~~[is conducted]~~ outside the United States; and

145 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -  
146 Utah UDITPA Provisions, ~~[the corporation]~~ has:

147 (A) at least \$1,000,000 of payroll located outside the United States; and

148 (B) at least \$2,000,000 of property located outside the United States.

149 (b) "Foreign operating company" does not include a corporation that qualifies for the  
150 Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

151 (17) (a) "Foreign real estate investment trust" means:

152 (i) a business entity organized outside the laws of the United States if:

153 (A) at least 75% of the business entity's total asset value at the close of the business  
154 entity's taxable year is represented by:

155 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

156 (II) cash or cash equivalents; or

- 157 (III) one or more securities issued or guaranteed by the United States;
- 158 (B) the business entity is:
- 159 (I) not subject to income taxation:
- 160 (Aa) on amounts distributed to the business entity's beneficial owners; and
- 161 (Bb) in the jurisdiction in which the business entity is organized; or
- 162 (II) exempt from income taxation on an entity level in the jurisdiction in which the
- 163 business entity is organized;
- 164 (C) the business entity distributes at least 85% of the business entity's taxable income,
- 165 as computed in the jurisdiction in which the business entity is organized, to the holders of the
- 166 business entity's:
- 167 (I) shares or beneficial interests; and
- 168 (II) on an annual basis;
- 169 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
- 170 by a single person:
- 171 (Aa) the voting power of the business entity; or
- 172 (Bb) the value of the shares or beneficial interests of the business entity; or
- 173 (II) the shares of the business entity are regularly traded on an established securities
- 174 market; and
- 175 (E) the business entity is organized in a country that has a tax treaty with the United
- 176 States; or
- 177 (ii) a listed Australian property trust.
- 178 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 179 commission may make rules defining:
- 180 (i) "cash or cash equivalents";
- 181 (ii) "established securities market"; or
- 182 (iii) "listed Australian property trust."
- 183 (18) "Income" includes losses.
- 184 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
- 185 during the year in which Utah taxable income is determined.
- 186 (20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section
- 187 59-7-302.

188 (21) "Real estate investment trust" [~~is as~~] means the same as that term is defined in  
189 Section 856, Internal Revenue Code.

190 (22) "Related expenses" means:

191 (a) expenses directly attributable to nonbusiness income; and

192 (b) the portion of interest or other expense indirectly attributable to both nonbusiness  
193 and business income [~~which~~] that bears the same ratio to the aggregate amount of such interest  
194 or other expense, determined without regard to this Subsection (22), as the average amount of  
195 the asset producing the nonbusiness income bears to the average amount of all assets of the  
196 taxpayer within the taxable year.

197 [~~(24)~~] (23) "S corporation" means an S corporation as defined in Section 1361, Internal  
198 Revenue Code.

199 [~~(23)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
200 Section 168, Internal Revenue Code.

201 (25) "State of the United States" includes any of the 50 states or the District of  
202 Columbia.

203 (26) (a) "Taxable year" means the calendar year or the fiscal year ending during such  
204 calendar year upon the basis of which the adjusted income is computed.

205 (b) In the case of a return made for a fractional part of a year under this chapter or  
206 under rules prescribed by the commission, "taxable year" includes the period for which such  
207 return is made.

208 (27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

209 (28) "Threshold level of business activity" means business activity in the United States  
210 equal to or greater than 20% of the corporation's total business activity as determined under  
211 Section 59-7-401.

212 (29) (a) "Unadjusted income" means federal taxable income as determined on a  
213 separate return basis before intercompany eliminations as determined by the Internal Revenue  
214 Code, before the net operating loss deduction and special deductions for dividends received.

215 (b) "Unadjusted income" includes global intangible low-taxed income described in  
216 Section 951A, Internal Revenue Code.

217 (30) (a) "Unitary group" means a group of corporations that:

218 (i) are related through common ownership; and

219 (ii) by a preponderance of the evidence as determined by a court of competent  
220 jurisdiction or the commission, are economically interdependent with one another as  
221 demonstrated by the following factors:

222 (A) centralized management;

223 (B) functional integration; and

224 (C) economies of scale.

225 (b) "Unitary group" includes a captive real estate investment trust.

226 (c) "Unitary group" does not include an S corporation.

227 (31) "United States" includes the 50 states and the District of Columbia.

228 (32) "Utah net loss" means the current year Utah taxable income before Utah net loss  
229 deduction, if determined to be less than zero.

230 (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable  
231 years that may be carried back or carried forward to the current taxable year in accordance with  
232 Section 59-7-110.

233 (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction  
234 less Utah net loss deduction.

235 (b) "Utah taxable income" includes income from tangible or intangible property located  
236 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign  
237 commerce.

238 (35) "Utah taxable income before net loss deduction" means apportioned income plus  
239 nonbusiness income allocable to Utah net of related expenses.

240 (36) (a) "Water's edge combined report" means a report combining the income and  
241 activities of:

242 (i) all members of a unitary group that are:

243 (A) corporations organized or incorporated in the United States, including those  
244 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
245 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

246 (B) corporations organized or incorporated outside of the United States meeting the  
247 threshold level of business activity; and

248 (ii) an affiliated group electing to file a water's edge combined report under Subsection  
249 59-7-402(2).

250 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto  
251 Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a  
252 unitary group.

253 (37) "Worldwide combined report" means the combination of the income and activities  
254 of all members of a unitary group irrespective of the country in which the corporations are  
255 incorporated or conduct business activity.

256 Section 2. Section **59-7-106** is amended to read:

257 **59-7-106. Subtractions from unadjusted income.**

258 (1) In computing adjusted income, the following amounts shall be subtracted from  
259 unadjusted income:

260 (a) the foreign dividend gross-up included in gross income for federal income tax  
261 purposes under Section 78, Internal Revenue Code;

262 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the  
263 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the  
264 taxable year for which the net capital loss is incurred;

265 (c) the decrease in salary expense deduction for federal income tax purposes due to  
266 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

267 (d) the decrease in qualified research and basic research expense deduction for federal  
268 income tax purposes due to claiming the federal credit for increasing research activities under  
269 Section 41, Internal Revenue Code;

270 (e) the decrease in qualified clinical testing expense deduction for federal income tax  
271 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for  
272 rare diseases or conditions under Section 45C, Internal Revenue Code;

273 (f) any decrease in any expense deduction for federal income tax purposes due to  
274 claiming any other federal credit;

275 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and  
276 (2)(b);

277 (h) any income on the federal corporation income tax return that has been previously  
278 taxed by Utah;

279 (i) an amount included in federal taxable income that is due to a refund of a tax,  
280 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation

- 281 tax:
- 282 (i) if that tax is imposed for the privilege of:
- 283 (A) doing business; or
- 284 (B) exercising a corporate franchise;
- 285 (ii) if that tax is paid by the corporation to:
- 286 (A) Utah;
- 287 (B) another state of the United States;
- 288 (C) a foreign country;
- 289 (D) a United States possession; or
- 290 (E) the Commonwealth of Puerto Rico; and
- 291 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- 292 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
- 293 subtraction under Section 59-7-109;
- 294 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
- 295 from a subsidiary that:
- 296 (i) is a member of the unitary group;
- 297 (ii) is organized or incorporated outside of the United States; and
- 298 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 299 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
- 300 foreign operating company;
- 301 (m) the amount of gain or loss that is included in unadjusted income but not recognized
- 302 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
- 303 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
- 304 with Section 338(h)(10), Internal Revenue Code;
- 305 (n) the amount of gain or loss that is included in unadjusted income but not recognized
- 306 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
- 307 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
- 308 Revenue Code, has been made for federal purposes;
- 309 (o) subject to Subsection (5), an adjustment to the following due to a difference
- 310 between basis for federal purposes and basis as computed under Section 59-7-107:
- 311 (i) an amortization expense;

- 312 (ii) a depreciation expense;
- 313 (iii) a gain;
- 314 (iv) a loss; or
- 315 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 316 (p) an interest expense that is not deducted on a federal corporation income tax return
- 317 under Section 265(b) or 291(e), Internal Revenue Code;
- 318 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 319 subsidiary that is an insurance company is:
- 320 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
- 321 (ii) under common ownership;
- 322 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
- 323 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
- 324 53B-8a-102.5:
- 325 (i) that the corporation or a person other than the corporation makes into an account
- 326 owned by the corporation during the taxable year;
- 327 (ii) to the extent that neither the corporation nor the person other than the corporation
- 328 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
- 329 return; and
- 330 (iii) to the extent the qualified investment does not exceed the maximum amount of the
- 331 qualified investment that may be subtracted from unadjusted income for a taxable year in
- 332 accordance with Subsection 53B-8a-106(1);
- 333 (s) for a corporation that makes a donation, as that term is defined in Section
- 334 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
- 335 amount of the donation to the extent that the corporation did not deduct the donation on a
- 336 federal income tax return;
- 337 (t) for purposes of income included in a combined report under Part 4, Combined
- 338 Reporting, the entire amount of the dividends a member of a unitary group receives or is
- 339 considered to receive from a captive real estate investment trust; [~~and~~]
- 340 (u) the increase in income for federal income tax purposes due to claiming a:
- 341 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
- 342 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code[-]; and

343           (v) the amount of global intangible low-taxed income described in Section 951A,  
344 Internal Revenue Code, that is included in unadjusted income.

345           (2) For purposes of Subsection (1)(b):

346           (a) the subtraction shall be made by claiming the subtraction on a return filed:

347           (i) under this chapter for the taxable year for which the net capital loss is incurred; and

348           (ii) by the due date of the return, including extensions; and

349           (b) a net capital loss for a taxable year shall be:

350           (i) subtracted for the taxable year for which the net capital loss is incurred; or

351           (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue  
352 Code.

353           (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a  
354 taxpayer shall first subtract from a dividend considered to be received or received an expense  
355 directly attributable to that dividend.

356           (b) For purposes of Subsection (3)(a), the amount of an interest expense that is  
357 considered to be directly attributable to a dividend is calculated by multiplying the interest  
358 expense by a fraction:

359           (i) the numerator of which is the taxpayer's average investment in the dividend paying  
360 subsidiaries; and

361           (ii) the denominator of which is the taxpayer's average total investment in assets.

362           (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in  
363 determining income apportionable to this state, a portion of the factors of a foreign subsidiary  
364 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the  
365 combined report factors as provided in this Subsection (3)(c).

366           (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign  
367 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be  
368 included in the combined report factors is calculated by multiplying each factor of the foreign  
369 subsidiary by a fraction:

370           (A) not to exceed 100%; and

371           (B) (I) the numerator of which is the amount of the dividend paid by the foreign  
372 subsidiary that is included in adjusted income; and

373           (II) the denominator of which is the current year earnings and profits of the foreign

374 subsidiary as determined under the Internal Revenue Code.

375 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under  
376 Subsection (1)(l):

377 (i) if the taxpayer elects to file a worldwide combined report as provided in Section  
378 59-7-403; or

379 (ii) for the following:

380 (A) income generated from intangible property; or

381 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
382 generated from an asset held for investment and not from a regular business trading activity.

383 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating  
384 company:

385 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

386 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a  
387 transaction that occurs between members of a unitary group.

388 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining  
389 income apportionable to this state, the factors for a foreign operating company shall be  
390 included in the combined report factors in the same percentages as the foreign operating  
391 company's adjusted income is included in the combined adjusted income.

392 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
393 commission may by rule define what constitutes:

394 (i) income generated from intangible property; or

395 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
396 generated from an asset held for investment and not from a regular business trading activity.

397 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of  
398 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax  
399 credit is claimed if:

400 (i) there is a reduction in federal basis for a federal tax credit; and

401 (ii) there is no corresponding tax credit allowed in this state.

402 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
403 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)  
404 through (iv).

405 Section 3. Section **59-10-114** is amended to read:

406 **59-10-114. Additions to and subtractions from adjusted gross income of an**  
407 **individual.**

408 (1) There shall be added to adjusted gross income of a resident or nonresident  
409 individual:

410 (a) a lump sum distribution that the taxpayer does not include in adjusted gross income  
411 on the taxpayer's federal individual income tax return for the taxable year;

412 (b) the amount of a child's income calculated under Subsection (4) that:

413 (i) a parent elects to report on the parent's federal individual income tax return for the  
414 taxable year; and

415 (ii) the parent does not include in adjusted gross income on the parent's federal  
416 individual income tax return for the taxable year;

417 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for  
418 the taxable year if:

419 (A) the resident or nonresident individual does not deduct the amounts on the resident  
420 or nonresident individual's federal individual income tax return under Section 220, Internal  
421 Revenue Code;

422 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

423 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a  
424 return the resident or nonresident individual files under this chapter;

425 (ii) a disbursement required to be added to adjusted gross income in accordance with  
426 Subsection 31A-32a-105(3); or

427 (iii) an amount required to be added to adjusted gross income in accordance with  
428 Subsection 31A-32a-105(5)(c);

429 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  
430 from the account of a resident or nonresident individual who is an account owner as defined in  
431 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
432 withdrawn from the account of the resident or nonresident individual who is the account  
433 owner:

434 (i) is not expended for:

435 (A) higher education costs as defined in Section 53B-8a-102.5; or

436 (B) a payment or distribution that qualifies as an exception to the additional tax for  
437 distributions not used for educational expenses provided in Sections 529(c) and 530(d),  
438 Internal Revenue Code; and

439 (ii) is:

440 (A) subtracted by the resident or nonresident individual:

441 (I) who is the account owner; and

442 (II) on the resident or nonresident individual's return filed under this chapter for a  
443 taxable year beginning on or before December 31, 2007; or

444 (B) used as the basis for the resident or nonresident individual who is the account  
445 owner to claim a tax credit under Section 59-10-1017;

446 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of  
447 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other  
448 evidences of indebtedness:

449 (i) issued by one or more of the following entities:

450 (A) a state other than this state;

451 (B) the District of Columbia;

452 (C) a political subdivision of a state other than this state; or

453 (D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A)  
454 through (C); and

455 (ii) to the extent the interest is not included in adjusted gross income on the taxpayer's  
456 federal income tax return for the taxable year;

457 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a  
458 resident trust of income that was taxed at the trust level for federal tax purposes, but was  
459 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

460 (g) any distribution received by a resident beneficiary of a nonresident trust of  
461 undistributed distributable net income realized by the trust on or after January 1, 2004, if that  
462 undistributed distributable net income was taxed at the trust level for federal tax purposes, but  
463 was not taxed at the trust level by any state, with undistributed distributable net income  
464 considered to be distributed from the most recently accumulated undistributed distributable net  
465 income; and

466 (h) any adoption expense:

467 (i) for which a resident or nonresident individual receives reimbursement from another  
468 person; and

469 (ii) to the extent to which the resident or nonresident individual subtracts that adoption  
470 expense:

471 (A) on a return filed under this chapter for a taxable year beginning on or before  
472 December 31, 2007; or

473 (B) from federal taxable income on a federal individual income tax return.

474 (2) There shall be subtracted from adjusted gross income of a resident or nonresident  
475 individual:

476 (a) the difference between:

477 (i) the interest or a dividend on an obligation or security of the United States or an  
478 authority, commission, instrumentality, or possession of the United States, to the extent that  
479 interest or dividend is:

480 (A) included in adjusted gross income for federal income tax purposes for the taxable  
481 year; and

482 (B) exempt from state income taxes under the laws of the United States; and

483 (ii) any interest on indebtedness incurred or continued to purchase or carry the  
484 obligation or security described in Subsection (2)(a)(i);

485 (b) for taxable years beginning on or after January 1, 2000, if the conditions of  
486 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

487 (i) during a time period that the Ute tribal member resides on homesteaded land  
488 diminished from the Uintah and Ouray Reservation; and

489 (ii) from a source within the Uintah and Ouray Reservation;

490 (c) an amount received by a resident or nonresident individual or distribution received  
491 by a resident or nonresident beneficiary of a resident trust:

492 (i) if that amount or distribution constitutes a refund of taxes imposed by:

493 (A) a state; or

494 (B) the District of Columbia; and

495 (ii) to the extent that amount or distribution is included in adjusted gross income for  
496 that taxable year on the federal individual income tax return of the resident or nonresident  
497 individual or resident or nonresident beneficiary of a resident trust;

- 498 (d) the amount of a railroad retirement benefit:
- 499 (i) paid:
- 500 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
- 501 seq.;
- 502 (B) to a resident or nonresident individual; and
- 503 (C) for the taxable year; and
- 504 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
- 505 that resident or nonresident individual's federal individual income tax return for that taxable
- 506 year;
- 507 (e) an amount:
- 508 (i) received by an enrolled member of an American Indian tribe; and
- 509 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
- 510 part on that amount in accordance with:
- 511 (A) federal law;
- 512 (B) a treaty; or
- 513 (C) a final decision issued by a court of competent jurisdiction;
- 514 (f) an amount received:
- 515 (i) for the interest on a bond, note, or other obligation issued by an entity for which
- 516 state statute provides an exemption of interest on its bonds from state individual income tax;
- 517 (ii) by a resident or nonresident individual;
- 518 (iii) for the taxable year; and
- 519 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
- 520 federal income tax return for the taxable year; ~~and~~
- 521 (g) the amount of all income, including income apportioned to another state, of a
- 522 nonmilitary spouse of an active duty military member if:
- 523 (i) both the nonmilitary spouse and the active duty military member are nonresident
- 524 individuals;
- 525 (ii) the active duty military member is stationed in Utah;
- 526 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
- 527 4001(a)(2); and
- 528 (iv) the income is included in adjusted gross income for federal income tax purposes

529 for the taxable year[-]; and  
530 (h) the amount of global intangible low-taxed income described in Section 951A,  
531 Internal Revenue Code, that is included in adjusted gross income.

532 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:  
533 (i) the taxpayer is a Ute tribal member; and  
534 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
535 requirements of this Subsection (3).

536 (b) The agreement described in Subsection (3)(a):  
537 (i) may not:  
538 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
539 (B) provide a subtraction under this section greater than or different from the  
540 subtraction described in Subsection (2)(b); or  
541 (C) affect the power of the state to establish rates of taxation; and  
542 (ii) shall:  
543 (A) provide for the implementation of the subtraction described in Subsection (2)(b);  
544 (B) be in writing;  
545 (C) be signed by:  
546 (I) the governor; and  
547 (II) the chair of the Business Committee of the Ute tribe;  
548 (D) be conditioned on obtaining any approval required by federal law; and  
549 (E) state the effective date of the agreement.

550 (c) (i) The governor shall report to the commission by no later than February 1 of each  
551 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is  
552 in effect.

553 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the  
554 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or  
555 after the January 1 following the termination of the agreement.

556 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,  
557 Utah Administrative Rulemaking Act, the commission may make rules:  
558 (i) for determining whether income is derived from a source within the Uintah and  
559 Ouray Reservation; and

560 (ii) that are substantially similar to how adjusted gross income derived from Utah  
561 sources is determined under Section 59-10-117.

562 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

563 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's  
564 Interest and Dividends; or

565 (ii) (A) a form designated by the commission in accordance with Subsection  
566 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal  
567 individual income taxes the information contained on 2000 Form 8814 is reported on a form  
568 other than Form 8814; and

569 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter  
570 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as  
571 being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
572 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
573 8814.

574 (b) The amount of a child's income added to adjusted gross income under Subsection  
575 (1)(b) is equal to the difference between:

576 (i) the lesser of:

577 (A) the base amount specified on Form 8814; and

578 (B) the sum of the following reported on Form 8814:

579 (I) the child's taxable interest;

580 (II) the child's ordinary dividends; and

581 (III) the child's capital gain distributions; and

582 (ii) the amount not taxed that is specified on Form 8814.

583 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences  
584 of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not  
585 be added to adjusted gross income of a resident or nonresident individual if, as annually  
586 determined by the commission:

587 (a) for an entity described in Subsection (1)(e)(i)(A) or (B), the entity and all of the  
588 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
589 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

590 (b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not

591 impose a tax based on income on any part of the bonds, notes, and other evidences of  
592 indebtedness of this state:

593 (i) the entity; or

594 (ii) (A) the state in which the entity is located; or

595 (B) the District of Columbia, if the entity is located within the District of Columbia.

596 Section 4. Section **59-10-202** is amended to read:

597 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**  
598 **nonresident estate or trust.**

599 (1) There shall be added to unadjusted income of a resident or nonresident estate or  
600 trust:

601 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal  
602 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in  
603 determining adjusted gross income;

604 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of  
605 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other  
606 evidences of indebtedness:

607 (i) issued by one or more of the following entities:

608 (A) a state other than this state;

609 (B) the District of Columbia;

610 (C) a political subdivision of a state other than this state; or

611 (D) an agency or instrumentality of an entity described in Subsections (1)(b)(i)(A)

612 through (C); and

613 (ii) to the extent the interest is not included in federal taxable income on the taxpayer's  
614 federal income tax return for the taxable year;

615 (c) any portion of federal taxable income for a taxable year if that federal taxable  
616 income is derived from stock:

617 (i) in an S corporation; and

618 (ii) that is held by an electing small business trust;

619 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  
620 from the account of a resident or nonresident estate or trust that is an account owner as defined  
621 in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount

622 withdrawn from the account of the resident or nonresident estate or trust that is the account  
623 owner:

624 (i) is not expended for:

625 (A) higher education costs as defined in Section 53B-8a-102.5; or

626 (B) a payment or distribution that qualifies as an exception to the additional tax for  
627 distributions not used for educational expenses provided in Sections 529(c) and 530(d),  
628 Internal Revenue Code; and

629 (ii) is:

630 (A) subtracted by the resident or nonresident estate or trust:

631 (I) that is the account owner; and

632 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a  
633 taxable year beginning on or before December 31, 2007; or

634 (B) used as the basis for the resident or nonresident estate or trust that is the account  
635 owner to claim a tax credit under Section 59-10-1017; and

636 (e) any fiduciary adjustments required by Section 59-10-210.

637 (2) There shall be subtracted from unadjusted income of a resident or nonresident  
638 estate or trust:

639 (a) the interest or a dividend on obligations or securities of the United States and its  
640 possessions or of any authority, commission, or instrumentality of the United States, to the  
641 extent that interest or dividend is included in gross income for federal income tax purposes for  
642 the taxable year but exempt from state income taxes under the laws of the United States, but  
643 the amount subtracted under this Subsection (2) shall be reduced by any interest on  
644 indebtedness incurred or continued to purchase or carry the obligations or securities described  
645 in this Subsection (2), and by any expenses incurred in the production of interest or dividend  
646 income described in this Subsection (2) to the extent that such expenses, including amortizable  
647 bond premiums, are deductible in determining federal taxable income;

648 (b) income of an irrevocable resident trust if:

649 (i) the income would not be treated as state taxable income derived from Utah sources  
650 under Section 59-10-204 if received by a nonresident trust;

651 (ii) the trust first became a resident trust on or after January 1, 2004;

652 (iii) no assets of the trust were held, at any time after January 1, 2003, in another

653 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

654 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

655 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the

656 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,

657 Subchapter J, Subpart E of the Internal Revenue Code; and

658 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on

659 indebtedness incurred or continued to purchase or carry the assets generating the income

660 described in this Subsection (2)(b), and by any expenses incurred in the production of income

661 described in this Subsection (2)(b), to the extent that those expenses, including amortizable

662 bond premiums, are deductible in determining federal taxable income;

663 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or

664 nonresident estate or trust derived from a deceased Ute tribal member:

665 (i) during a time period that the Ute tribal member resided on homesteaded land

666 diminished from the Uintah and Ouray Reservation; and

667 (ii) from a source within the Uintah and Ouray Reservation;

668 (d) any amount:

669 (i) received by a resident or nonresident estate or trust;

670 (ii) that constitutes a refund of taxes imposed by:

671 (A) a state; or

672 (B) the District of Columbia; and

673 (iii) to the extent that amount is included in total income on that resident or nonresident

674 estate's or trust's federal tax return for estates and trusts for that taxable year;

675 (e) the amount of a railroad retirement benefit:

676 (i) paid:

677 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

678 seq.;

679 (B) to a resident or nonresident estate or trust derived from a deceased resident or

680 nonresident individual; and

681 (C) for the taxable year; and

682 (ii) to the extent that railroad retirement benefit is included in total income on that

683 resident or nonresident estate's or trust's federal tax return for estates and trusts;

- 684 (f) an amount:
- 685 (i) received by a resident or nonresident estate or trust if that amount is derived from a  
686 deceased enrolled member of an American Indian tribe; and
- 687 (ii) to the extent that the state is not authorized or permitted to impose a tax under this  
688 part on that amount in accordance with:
- 689 (A) federal law;
- 690 (B) a treaty; or
- 691 (C) a final decision issued by a court of competent jurisdiction;
- 692 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section  
693 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the  
694 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for  
695 the taxable year;
- 696 (h) any fiduciary adjustments required by Section 59-10-210; ~~and~~
- 697 (i) an amount received:
- 698 (i) for the interest on a bond, note, or other obligation issued by an entity for which  
699 state statute provides an exemption of interest on its bonds from state individual income tax;
- 700 (ii) by a resident or nonresident estate or trust;
- 701 (iii) for the taxable year; and
- 702 (iv) to the extent the amount is included in federal taxable income on the taxpayer's  
703 federal income tax return for the taxable year[-]; and
- 704 (j) the amount of global intangible low-taxed income described in Section 951A,  
705 Internal Revenue Code, that is included in unadjusted income.
- 706 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences  
707 of indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through (D) may not  
708 be added to unadjusted income of a resident or nonresident estate or trust if, as annually  
709 determined by the commission:
- 710 (a) for an entity described in Subsection (1)(b)(i)(A) or (B), the entity and all of the  
711 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
712 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
- 713 (b) for an entity described in Subsection (1)(b)(i)(C) or (D), the following do not  
714 impose a tax based on income on any part of the bonds, notes, and other evidences of

715 indebtedness of this state:

716 (i) the entity; or

717 (ii) (A) the state in which the entity is located; or

718 (B) the District of Columbia, if the entity is located within the District of Columbia.

719 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

720 (i) the income is derived from a deceased Ute tribal member; and

721 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

722 requirements of this Subsection (4).

723 (b) The agreement described in Subsection (4)(a):

724 (i) may not:

725 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

726 (B) provide a subtraction under this section greater than or different from the

727 subtraction described in Subsection (2)(c); or

728 (C) affect the power of the state to establish rates of taxation; and

729 (ii) shall:

730 (A) provide for the implementation of the subtraction described in Subsection (2)(c);

731 (B) be in writing;

732 (C) be signed by:

733 (I) the governor; and

734 (II) the chair of the Business Committee of the Ute tribe;

735 (D) be conditioned on obtaining any approval required by federal law; and

736 (E) state the effective date of the agreement.

737 (c) (i) The governor shall report to the commission by no later than February 1 of each

738 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is

739 in effect.

740 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the

741 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or

742 after the January 1 following the termination of the agreement.

743 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,

744 Utah Administrative Rulemaking Act, the commission may make rules:

745 (i) for determining whether income is derived from a source within the Uintah and

746 Ouray Reservation; and

747 (ii) that are substantially similar to how adjusted gross income derived from Utah  
748 sources is determined under Section 59-10-117.

749 Section 5. **Effective date.**

750 If approved by two-thirds of all the members elected to each house, this bill takes effect  
751 upon approval by the governor, or the day following the constitutional time limit of Utah  
752 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
753 the date of veto override.

754 Section 6. **Retrospective operation.**

755 This bill has retrospective operation for a taxable year beginning on or after January 1,  
756 2018.